



The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

PROCEDURAL MEMORANDUM

TO: D.T.E. 03-59 Service List
(via E-mail and Regular Mail)

FROM: Jesse Reyes, Hearing Officer

RE: Effect of Second Circuit Temporary Stay Order

DATE: October 14, 2003

On September 25, 2003, the Department directed participants to file offers of proof in this proceeding by October 9, 2003. On October 8, 2003, the United States Court of Appeals for the Second Circuit granted a temporary stay of provisions of the Triennial Review Order that permit states 90 days to petition the Federal Communications Commission for a waiver of its rules pertaining to the availability of switching as an unbundled network element for requesting carriers that serve enterprise customers. InfoHighway Communications Corporation v. FCC, No. 03-40608 (2d Cir. Oct. 8, 2003)(order granting temporary stay pending hearing of motion for stay); Manhattan Telecommunications Corporation v. FCC, No. 03-40606 (2d Cir. Oct. 8, 2003)(same).

On October 9, 2003, DSCI Corporation and InfoHighway Communications Corporation filed a letter with the Department, as well as copies of the temporary stay orders, in lieu of filing an offer of proof, stating their belief that the effect of the orders is to stay state proceedings as well. The letter also stated that the carriers would not file an offer of proof pending a further ruling on the motion for stay.

The Department concludes that nothing in the temporary stay orders or in the underlying motions for stay indicate that the court has stayed the 90-day investigation in D.T.E. 03-59. Further, it is imprudent to stay this proceeding based only on the possibility that the provisions of the Triennial Review Order may be modified, given the short deadline under the current rules. Therefore, I direct DCSI and InfoHighway, as well as any other participants that withheld their offers of proof as a result of the stay orders, to file their offers of proof no later than **5:00 p.m. on October 15, 2003**.

Please contact Jesse Reyes (617) 305-3735 if you have any questions.